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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/687,389 | 10/15/2003 | Ivan Osorio | 011738.00139 | 2112 |
| 70467 | 7590 | 04/14/2010 | EXAMINER | |
| BANNER & WITCOFF, LTD | | | ASTORINO, MICHAEL C | |
| AND ATTORNEYS FOR CLIENT NUMBER 011738 | | | | |
| 10 SOUTH WACKER DRIVE | | | ART UNIT | PAPER NUMBER |
| SUITE 3000 | | | | 3769 |
| CHICAGO, IL 60606 | | | | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 04/14/2010 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/687,389 | OSORIO ET AL. | |
| | Examiner | Art Unit | |
| | Michael C. Astorino | 3769 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 October 2009.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-8, 10-12, 14 and 33-43 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 2-8, 10-12, 14 and 33-43 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>10/08, 12/08, 2/09, 2/09, 3/09, 6/09</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

The Examiner acknowledges the response filed October 9, 2009.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-8, 10-12, 14, and 33-43 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In particular, claims 2-8, 10-12, 14, and 33-43 are drawn to a process. Under 35 U.S.C. §101 a process must 1) be tied to a particular machine or apparatus or 2) transform underlying subject matter such as an article to a different state or thing.

Independent claims 2, 33, and 38 each recite in the preamble “a computer-implemented method . . .” and later “computing using a processor”. As such it appears that the claim is implemented by a particular machine name a processor from a computer. However, the recitation of the “computer-implemented method” and “computing using a processor” do not impose a meaningful limit on the claim’s scope and involve more than insignificant extra-solution activity. For example, the broadest reasonable interpretation of the “computing using a processor” includes a processor which displays information where a human operator views the information and computes a score of relative severity of the at least one neurological event using the identified feature. Additionally, the remaining elements of the independent claims do not provide a particle machine or a transformation or a particle article.

Dependent claims are rejected because they are dependent on rejected claims.

The Applicant is invited to explain, to make the record clear, reasons that the rejection under 35 U.S.C. 101 does not apply.

Response to Arguments

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection. More specifically, the grounds for the 35 U.S.C. § 101 rejection has been clarified to such an extent that prudence requires this office action to be a non-final rejection.

The Applicant is invited to request an interview to discuss suggestions to overcome the applied prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is (571)272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Astorino/
Primary Examiner, Art Unit 3736

April 11, 2010